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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Herbert and Marsha Anderson,

Plaintiffs,

VS.

State Farm Fire and Casualty Company,

Defendant.

No. 08-cv-02010-PHX-ROS

ORDER

Before the Court is Defendant's Motion for Summary Judgment, (Doc. 10) and Plaintiffs' Cross-Motion for Summary Judgment. (Doc. 14.) For the reasons set forth herein, Defendant's Motion will be granted, and Plaintiffs' motion will be denied.

BACKGROUND

In July of 2007, heavy rains fell on the mountainside north of Plaintiffs' Scottsdale home. (Id. at 2). A drainage system that was supposed to divert the water failed to do so. (Id. at 8.) As a result, the water continued south and entered Plaintiffs' property. (Id. at 2.) The rainwater and mud it had picked up then entered the home, flooding it to a height of almost two feet and doing extensive damage. (Id. at 2.) Plaintiffs had a homeowners insurance policy with Defendant. (Id.) After Plaintiffs filed a claim under that policy, Defendant inspected the damage and then denied the claim. (Id. at 3-4.)

1 Plaintiffs and Defendant disagree over whether the denial of the claim was proper. A
2 clause in the policy excludes from coverage any “Water Damage, meaning: flood, surface
3 water,” and so on. (Doc. 10 at 3-4.) The dispositive question is whether the damage caused
4 by the rainwater that flooded Plaintiffs’ home qualifies as “Water Damage” under the policy,
5 and therefore is not covered by the policy.

6 II. STANDARD OF REVIEW

7 A court must grant summary judgment if the pleadings and supporting documents,
8 viewed in the light most favorable to the non-moving party, “show that there is no genuine
9 issue as to any material fact and that the moving party is entitled to a judgment as a matter
10 of law.” Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).
11 Substantive law determines which facts are material, and “[o]nly disputes over facts that
12 might affect the outcome of the suit under the governing law will properly preclude the entry
13 of summary judgment.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In
14 addition, the dispute must be genuine; that is, “the evidence is such that a reasonable jury
15 could return a verdict for the nonmoving party.” Id. at 248.

16 The party opposing summary judgment “may not rest upon the mere allegations or
17 denials of [the party’s] pleading, but . . . must set forth specific facts showing that there is a
18 genuine issue for trial.” Fed. R. Civ. P. 56(e); see Matsushita Elec. Indus. Co., Ltd. v. Zenith
19 Radio Corp., 475 U.S. 574, 586-87 (1986). There is no issue for trial unless there is
20 sufficient evidence favoring the non-moving party; “[i]f the evidence is merely colorable, or
21 is not significantly probative, summary judgment may be granted.” Anderson, 477 U.S. at
22 249-50 (citations omitted). However, “[c]redibility determinations, the weighing of the
23 evidence, and the drawing of legitimate inferences from the facts are jury functions, not those
24 of a judge.” Id. at 255. Therefore, “[t]he evidence of the non-movant is to be believed, and
25 all justifiable inferences are to be drawn in his favor” at the summary judgment stage. Id.

26 The meaning of a contract and whether that meaning is ambiguous are questions of
27 law. Burke v. Voicestream Wireless Corp., 87 P.3d 81, 83 (Ariz. Ct. App. 2004.) The terms
28 of insurance policies are given their plain and ordinary meaning, and any “actually

1 ambiguous” terms are interpreted against the insurer. Cal. Cas. Ins. Co. v. Am. Family Mut.
2 Ins. Co., 94 P.3d 616, 618 (Ariz. Ct. App. 2004).

3 III. ANALYSIS

4 There is no dispute over the material facts. Rainwater flowing across the surface of
5 the land entered Plaintiffs’ property and then their home, causing extensive damage. (Doc.
6 14 at 2.) A drainage system intended to divert such flows of water failed to do so. (Id.)

7 Plaintiffs’ insurance policy contains a section on “LOSSES NOT INSURED,” which
8 includes the following language:

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10 2. We do not insure under any coverage for any loss which would not have
11 occurred in the absence of one or more of the following excluded events. We
12 do not insure for such loss regardless of: (a) the cause of the excluded event;
13 or (b) other causes of the loss; or (c) whether other causes acted concurrently
or in any sequence with the excluded event to produce the loss; or (d) whether
the event occurs suddenly or gradually, involves isolated or widespread
damage, arises from natural or external forces, or occurs as a result of any
combination of these:

14 * * *

15 c. Water Damage, meaning:

16 (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow
17 of a body of water, or spray from any of these, all whether driven by
wind or not;

18 (Doc. 10 at 3-4.) Therefore, if the water that entered Plaintiffs’ home was “surface water,”
19 then the policy does not cover the resulting damage. (Id.) Long-established Arizona
20 precedent holds that flows across the ground of rainwater are considered surface waters. See
21 Gibson v. Duncan, 152 P. 856, 856-57 (Ariz. 1915) (“[D]efendant . . . to keep said manure
22 and filth . . . from being washed [onto his premises] by the rain waters and waters from
23 melting snows, placed boards on edge upon his own premises, which said boards hold back
24 the surface waters upon plaintiff’s premises . . .”). This is in accord with the meaning given
25 the term by courts across the country¹ and with the term’s plain and ordinary meaning. The

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27 ¹See, e.g. Smith v. Union Auto. Ind. Co., 752 N.E.2d 1261,1268 (Ill. App. 2001)
28 (rainwater that flowed into window wells and flooded policy-holder’s basement was “surface
water”); Cameron v. USAA Prop. and Cas. Ins. Co., 733 A.2d 965, 971 (D.C. App. 1999)

1 drainage system's failure to divert the rainwater does not alter the water's character as
2 surface water.


3 Because the policy does not cover the damage at issue in this suit, Defendant did not
4 breach the contract. Further, Defendant adequately investigated the claim and provided a
5 reasonable basis for denying Plaintiffs' claim. Thus, Defendant did not breached its duty of
6 good faith and fair dealing. Accordingly,

7 **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment (Doc.
8 10) is **GRANTED**.

9 **FURTHER ORDERED** that Plaintiffs' Cross-Motion for Summary Judgment (Doc.
10 14) is **DENIED**.

11 **FURTHER ORDERED** that the clerk shall enter judgment accordingly.

12 DATED this 30th day of July, 2009.

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Roslyn O. Silver
United States District Judge

26 _____
26 (pool of water formed by torrential rain and melting snow that flooded policy-holder's
27 basement was "surface water"); Angott v. Great N. Ins. Co., 2006 WL 1328874, at 4 (E.D.
28 Mich. 2006) (water from torrential downpour that flooded policy-holder's basement was
"surface water").